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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 516

DAISY B. WOOTON (MRS. RICHARD G. WOOTON), WIDOW OF RICHARD G. WOOTON, DECEASED, ET AL., PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 5-7) is reported at 86 F. Supp. 143.

JURISDICTION

The judgment of the Court of Claims was entered on October 3, 1949 (R. 8). The petition for a writ of certiorari was filed on December 30, 1949. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1255.[1]

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[1] The petition refers to the antecedent of this section.

QUESTION PRESENTED

Whether the petitioners, as heirs at law or next of kin of the decedent, are entitled to maintain this action in view of the fact that the decedent, through whom they claim, received his right through an assignment in violation of Section 3477, Revised Statutes.

STATUTE INVOLVED

Revised Statutes:

> SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. * * *.
>
> (31 U.S.C. 1946 ed., Sec. 203.)

STATEMENT

The facts as alleged in the petition below and which were admitted by the Government's demurrer, which was sustained by the Court of Claims, may be summarized as follows (R. 1-4):

One Richard G. Wooton (petitioners' testator) had rendered certain professional services to F. T. Newton and his wife, Ethel Flurry Newton, and also was expected to represent them before the Bureau of Internal Revenue in an endeavor to have an asserted deficiency in income taxes reduced in amount (R. 1, 3).

On November 2, 1943, the Newtons executed an assignment to Richard G. Wooton of a claimed overpayment of income taxes for the years 1941, 1942 and 1943, the amount of which overpayment had not then been ascertained, as compensation for the services of Wooton which had already been rendered and for the further services expected to be rendered in the future. At that time, the Newtons were indigent and unable otherwise to pay. The Newtons were adjudicated bankrupt on August 31, 1944, in appropriate proceedings in the United States District Court for the Southern District of Mississippi and a trustee in bankruptcy was duly appointed. (R. 2-3.)

On or about July 20, 1947, the Bureau of Internal Revenue certified to the General Accounting Office that the Newtons had overpaid their income taxes for the years 1941, 1942 and 1943 in the amount of $52,858.67, and on August 21, 1947, the petitioners

demanded payment of that sum by the Comptroller General of the United States, which claim was rejected (R. 1-2).

On a date subsequent to the assignment above referred to, which date is not disclosed in the record, Richard G. Wooton died and the present petitioners, who are the heirs of the decedent, are prosecuting this case under the assignment (R. 1).

ARGUMENT

The assignment of F. T. and Ethel Flurry Newton of their claim against the United States for overpayment of taxes to Richard G. Wooton was void under the plain provisions of Section 3477 of the Revised Statutes, *supra*. That section, in so far as it is relevant, provides that all assignments of any claims upon the United States, regardless of consideration therefor, shall be absolutely null and void unless made after the allowance of such claim, the ascertainment of the amount due and the issuing of a warrant for the payment thereof.

According to the allegations of the petition in the Court of Claims (R. 1-4), the assignment by F. T. and Ethel Flurry Newton to Richard G. Wooton was made by instrument dated November 2, 1943, and the amount due was not allowed or ascertained until on or about July 20, 1947, when the Bureau of Internal Revenue certified the tax overpayment to the General Accounting Office. Furthermore, no warrant for the payment of the amount due the Newtons has ever issued. (R. 1.) It is manifest,

therefore, that the conditions prescribed by statute for a valid assignment have not been met.

Richard G. Wooton could not have prosecuted this claim against the United States because the assignment to him was null and void, and, therefore, the petitioners here, who claim the rights of the decedent by subrogation, are under the same disability because it is well established that the subrogee takes no greater rights than the person through whom he claims.

Contrary to the assertions of the petitioners, there is no conflict of decisions with respect to the operation of Section 3477. The cases cited by petitioner completely fail to establish a conflict as none of them involve an attempt by an assignee to enforce an assigned claim against the United States. Such cases merely establish that as between the immediate parties to an assignment the agreement is valid and enforceable.

The petitioners have not been denied a forum nor the Government accorded a windfall (cf. Pet. 10); they have simply misconceived their remedy. As the heirs at law of Richard G. Wooton, who held an assignment from the Newtons, petitioners' claim should be filed with the trustee in bankruptcy and prosecuted in that proceeding. Cf. *In re Webber Motor Co.*, 52 F. Supp. 742 (D.N.J.)

Section 3477 of the Revised Statutes was aimed at the very situation here presented, that is, to protect the Government against the danger of conflicting claims and multiple liabili-

ties. *Seaboard Air Line Ry.* v. *United States,* 256 U. S. 655, 657. Both the petitioners and the trustee in bankruptcy claim the overpayment of taxes.

Claims against the United States cannot be assigned so as to enable the assignee to bring suit in his own name in the Court of Claims (*United States* v. *Gillis,* 95 U. S. 407), and the only assignments which are without the orbit of the statute are those assignments which occur by operation of law. (*United States* v. *Aetna Casualty and Surety Co.,* Nos. 35, 36, 37, and 38, this Term, decided December 12, 1949; *Erwin* v. *United States,* 97 U. S. 392), which is not the situation here. See also *United States* v. *Munsey Trust Co.,* 332 U. S. 234, 237.

CONCLUSION

The petition for certiorari presents no question warranting review, there is no conflict of decisions and the conclusion of the Court of Claims is correct. Therefore, the petition should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.
THERON LAMAR CAUDLE,
Assistant Attorney General.
ELLIS N. SLACK,
JOSEPH H. SHEPPARD,
Special Assistants to the Attorney General.

FEBRUARY, 1950.

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